

§ 1150.36

49 CFR Ch. X (10–1–98 Edition)

National Historic Preservation Act, 16 U.S.C. 470.

[53 FR 5982, Feb. 29, 1988, as amended at 53 FR 31341, Aug. 18, 1988; 62 FR 47584, Sept. 10, 1997]

§ 1150.36 Exempt construction of connecting track.

(a) *Scope.* This class exemption applies to proceedings involving the construction and operation of connecting lines of railroad within existing rail rights-of-way, or on land owned by connecting railroads, under 49 U.S.C. 10901 (a), (b), and (c). (See the reference to connecting track in 49 CFR 1105.6(b)(1).) This class exemption is designed to expedite and facilitate connecting track construction while ensuring full and timely environmental review. The Surface Transportation Board (Board) has found that its prior review of connecting track construction and operation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; that continued regulation is not necessary to protect shippers from abuse of market power; and that the construction of connecting track would be of limited scope. See 49 U.S.C. 10502. To use this class exemption, a pre-filing notice, environmental report, historic report, and notice of exemption must be filed that complies with the procedures in § 1150.36 (b) and (c), and the Board's environmental rules, codified at 49 CFR part 1105.

(b) *Environmental requirements.* The environmental regulations at 49 CFR part 1105 must be complied with fully. An environmental report containing the information specified at 49 CFR 1105.7(e), as well as an historic report containing the information specified at 49 CFR 1105.8(d), must be filed either before or at the same time as the notice of exemption is filed. See 49 CFR 1105.7(a). The entity seeking the exemption authority must also serve copies of the environmental report on the agencies listed at 49 CFR 1105.7(b). Because the environmental report must include a certification that appropriate agencies have been consulted in its preparation (see 49 CFR 1105.7(c)), parties should begin environmental and historic consultations well before the notice of exemption is filed. Environmental requirements may be waived or

modified where a petitioner demonstrates in writing that such action is appropriate. See 49 CFR 1105.10(c). It is to the advantage of parties to consult with the Board's Section of Environmental Analysis (SEA) at the earliest possible date to begin environmental review.

(c) *Procedures and dates.* (1) At least 20 days prior to the filing of a notice of exemption with the Board, the party seeking the exemption authority must notify in writing: the State Public Service Board, the State Department of Transportation (or equivalent agency), and the State Clearinghouse (if there is no clearinghouse, the State Environmental Protection Agency), of each State involved. The pre-filing notice shall include: the name and address of the railroad (or other entity proposing to construct the line) and the proposed operator; a complete description of the proposed construction and operation, including a map; an indication that the class exemption procedure is being used; and the approximate date that construction is proposed to begin. This pre-filing notice shall include a certification that the petitioner will comply with the Board's environmental regulations, codified at 49 CFR part 1105, and a statement that those regulations generally require the Board to:

(i) Prepare an environmental assessment (EA) (or environmental impact statement (EIS) if necessary),

(ii) Make the document (EA or EIS, as appropriate) available to the parties (and to the public, upon request to SEA); and

(iii) Accept for filing and consideration comments on the environmental document as well as petitions for stay and reconsideration.

(2) Petitioner must file a verified notice of exemption with the Board at least 90 days before the construction is proposed to begin. In addition to the information contained in § 1150.36(c)(1), the notice shall include a statement certifying compliance with the environmental rules at 49 CFR part 1105 and the pre-filing notice requirements of 49 CFR 1150.36(c)(1).

(3) The Board, through the Director of the Office of Proceedings, shall publish a notice in the FEDERAL REGISTER

within 20 days after the notice of exemption is received that describes the construction project and invites comments. SEA will then prepare an EA (or, if necessary, an EIS). The EA generally will be made available 15 days after the FEDERAL REGISTER notice. It will be served on all parties and appropriate agencies. Others may request a copy from SEA. The deadline for submission of comments on the EA will generally be within 30 days of its availability (see 49 CFR 1105.10(b)). If an EIS is prepared, the time frames and procedures set forth in 49 CFR 1105.10(a) generally will apply.

(4) The Board's environmental document (together with any comments and SEA's recommendations) shall be used in deciding whether to allow the particular construction project to proceed under the class exemption and whether to impose appropriate mitigating conditions upon its use (including use of an environmentally preferable route). If the Board concludes that a particular project will result in serious adverse environmental consequences that cannot be adequately mitigated, it may deny authority to proceed with the construction under the class exemption (the "no-build" alternative). Persons believing that they can show that the need for a particular line outweighs the adverse environmental consequences can file an application for approval of the proposed construction under 49 U.S.C. 10901.

(5) No construction may begin until the Board has completed its environmental review and issued a final decision.

(6) Petitions to stay the effective date of the notice of exemption on other than environmental and/or historic preservation grounds must be filed within 10 days of the FEDERAL REGISTER publication. Petitions to stay the effective date of the notice on environmental and/or historic preservation grounds may be filed at any time but must be filed sufficiently in advance of the effective date to allow the Board to consider and act on the petition before the notice becomes effective. Petitions for reconsideration must be filed within 20 days of the FEDERAL REGISTER publication.

(7) The exemption generally will be effective 70 days after publication in the FEDERAL REGISTER, unless stayed. If the notice of exemption contains false or misleading information, the exemption is void *ab initio* and the Board shall summarily reject the exemption notice.

(8) Where significant environmental issues have been raised or discovered during the environmental review process, the Board shall issue, on or before the effective date of the exemption, a final decision allowing the exemption to become effective and imposing appropriate mitigating conditions or taking other appropriate action such as selecting the "no build" alternative.

(9) Where there has been full environmental review and no significant environmental issues have been raised or discovered, the Board, through the Director of the Office of Proceedings, shall issue, on or before the effective date of the exemption, a final decision consisting of a Finding of No Significant Impact (FONSI) to show that the environmental record has been considered (see 49 CFR 1105.10(g)).

(10) The Board, on its own motion or at the request of a party to the case, will stay the effective date of individual notices of exemption when an informed decision on environmental issues cannot be made prior to the date that the exemption authority would otherwise become effective. Stays will be granted initially for a period of 60 days to permit resolution of environmental issues and issuance of a final decision. The Board expects that this 60-day period will usually be sufficient for these purposes unless preparation of an EIS is required. If, however, environmental issues remain unresolved upon expiration of this 60-day period, the Board, upon its own motion, or at the request of a party to the case, will extend the stay, as necessary to permit completion of environmental review and issuance of a final decision. The Board's order will specify the duration of each extension of the initial stay period. In cases requiring the preparation of an EIS, the Board will extend the stay for a period sufficient to permit compliance with the procedural guidelines established by the Board's environmental regulations.

(d) *Third-Party Consultants.* An environmental and historic report required under 49 CFR 1105.7 and 1105.8 will not be required where a petitioner engages a third-party consultant who is approved by SEA and acts under SEA's direction and supervision in preparing the EA or EIS. In such a case, the third-party consultant must act on behalf of the Board, working under SEA's direction to collect the environmental information that is needed and to compile it into a draft EA or EIS, which is prepared under SEA's direction and then submitted to SEA for its final review and approval. See 49 CFR 1105.10(d).

[61 FR 29974, June 13, 1996]

Subpart E—Exempt Transactions Under 49 U.S.C. 10902 for Class III Rail Carriers

SOURCE: 61 FR 32355, June 24, 1996, unless otherwise noted.

§ 1150.41 Scope of exemption.

Except as indicated in paragraphs (a) through (d) of this section, this exemption applies to acquisitions or operations by Class III rail carriers under section 10902. This exemption also includes:

- (a) Acquisition by a Class III rail carrier of rail property that would be operated by a third party;
- (b) Operation by a Class III carrier of rail property acquired by a third party;
- (c) A change in operators on such a line; and
- (d) Acquisition of incidental trackage rights. Incidental trackage rights include the grant of trackage rights by the seller, or the acquisition of trackage rights to operate over the line of a third party, that occurs at the time of the purchase.

§ 1150.42 Procedures and relevant dates for small line acquisitions.

(a) This exemption applies to the acquisition of rail lines with projected annual revenues which, together with the acquiring carrier's projected annual revenue, do not exceed the annual revenue of a Class III railroad. To qualify for this exemption, the Class III rail carrier applicant must file a verified

notice providing details about the transaction, and a brief caption summary, conforming to the format in § 1150.44, for publication in the FEDERAL REGISTER. In addition to the written submission, the notice and summary must be submitted on a 3.5-inch diskette formatted for WordPerfect 5.1.

(b) The exemption will be effective 7 days after the notice is filed. The Board, through the Director of the Office of Proceedings, will publish a notice in the FEDERAL REGISTER within 30 days of the filing. A change in operators must follow the provisions at § 1150.44, and notice must be given to shippers.

(c) If the notice contains false or misleading information, the exemption is void *ab initio*. A petition to revoke under 49 U.S.C. 10502(d) does not automatically stay the exemption.

(d) Applicant must preserve intact all sites and structures more than 50 years old until compliance with the requirements of section 106 of the National Historic Preservation Act, 16 U.S.C. 470f, is achieved.

(e) If the projected annual revenue of the rail lines to be acquired or operated, together with the acquiring carrier's projected annual revenue, exceeds \$5 million, the applicant must, at least 60 days before the exemption becomes effective, post a notice of applicant's intent to undertake the proposed transaction at the workplace of the employees on the affected line(s) and serve a copy of the notice on the national offices of the labor unions with employees on the affected line(s), setting forth the types and numbers of jobs expected to be available, the terms of employment and principles of employee selection, and the lines that are to be transferred, and certify to the Board that it has done so.

[61 FR 32355, June 24, 1996, as amended at 62 FR 47584, Sept. 10, 1997]

§ 1150.43 Information to be contained in notice for small line acquisitions.

- (a) The full name and address of the Class III rail carrier applicant;
- (b) The name, address, and telephone number of the representative of the applicant who should receive correspondence;